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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,629	10/15/2003	Peter J. Ruffino	PR-CIP	2628

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EXAMINER

GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/605,629

**Applicant(s)**

RUFFINO, PETER J.

**Examiner**

Brian K. Green

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to provide support for the subject matter added to claim 1, section (A), lines 7-21, claim 11, section (A), lines 8-23, and claim 18, section (A), lines 7-23.

### ***Claim Rejections - 35 USC § 112***

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 11, lines 21-22, and claim 18, lines 20-21, stating that the resilient member forces the clasping arms together is misdescriptive since the clasping arms do not come together since the transparent flap is located between the clasping arms which prevent the clasping arms from engaging one another.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-6,10-14,18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 5,308,034) in view of Brown (U.S. Patent No. 5,301,393).

Hunter shows in figures 1-8 a "lottery card reader" comprising a clip (14) made from two separate pieces (71 and 72) that are assembled together, the clip having a first pair of arms (the upper portions of 71 and 72, see figure 1A or 8) separated from one another and a second pair of arms (the lower portions of 71 and 72, see figure 8) resiliently biased toward one another by a spring (75), and a single transparent flap (10) attached to the clip that can cover games on a lottery card. Hunter does not disclose making the two separate pieces from molded plastic, a resilient member that extends from one molded piece to the other molded piece, and molded plastic means extending from one of the molded pieces to the other molded piece to secure the molded pieces together. Brown shows in figures 1-11 a clip that is made from a first molded piece (102) having a clasping arm, a gripping arm, and a fulcrum therebetween, and a second molded piece (104) having a clasping arm, a gripping arm, and a fulcrum therebetween, a resilient member (108) extending from one molded piece to the other molded piece, and a molded plastic means (110) extending from one of the molded pieces to the other molded piece. Hunter discloses the idea of making clip from molded plastic, see column 2, lines 67-68. In view of the teachings of Brown it would have been obvious to one in the art to modify Hunter by making the two separate pieces from molded plastic, providing a resilient member that extends from one molded piece to the other molded piece, and including a molded plastic means extending from one of the molded pieces to the other molded piece to secure the molded pieces together since this would allow the clip to be made in an easier and less expensive manner as well as to allow the clip to be assembled in an easier and less expensive manner. In regard to

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claim 2, Hunter does not disclose snapping the two separate pieces together. Brown shows in figures 1-11 two embodiments that include a clip (10 or 100) that is formed from two separate pieces (12,16 or 102,104) that are snapped together, see column 2, lines 42-45, column 3, lines 40-42, column 6, lines 23-32. In view of the teachings of Brown it would have been obvious to one in the art to modify Hunter by making the clip from two pieces which snap since this would allow the clip to handle a wide range of document thickness, see Brown, column 2, lines 50-63 and would allow the clip to be assembled in an easier and faster manner. In regard to claim 3, Hunter shows that the sheet (10) is a single, unfolded sheet. In regard to claims 4,11, and 18, Brown does not disclose the use of a pair of arms that snap onto the other of the molded pieces. Brown discloses the idea of using a single elongated arm. It would have been obvious to one in the art to modify Hunter in view of Brown by making the single elongated arm into two shorter spaced apart arms since this would reduce the amount of material required to make the elongated arm. In regard to claims 5,13, and 19, the transparent sheet of Hunter is considered to be capable of being eraseably written on in ink, i.e. with the use of an erasable ink pen or marker. In regard to claims 6,14, and 18, Hunter does not disclose making the flap about 3 to about 4 inches long and about 1 3/4 to about 2 inches wide. It would have been an obvious matter of design choice to modify Hunter to the dimensions defined by the applicant since the Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device, see *In Gardner V. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ (Fed Cir 1984), MPEP 2144.04, IV., A. In regard to claims 10,12, and 18, Hunter shows in figure 1 that

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the clasping arm includes two parts (the two outer wing portions) the extend over only the ends (the right and left side ends) and the middle of the flap is exposed.

Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 5,308,034) in view of Brown (U.S. Patent No. 5,301,393) as applied to claims 1 and 11 above and further in view of Hull et al. (U.S. Patent No. 5,647,156).

Hunter in view of Brown disclose the applicant's basic inventive concept except for placing a vertical mark on the transparent flap. Hull et al. shows a transparent holder that includes indicia (32) printed on sheet (30,31,34,36) which are fixed to the holder and also discloses the idea of writing information directly onto the holder, see column 3, lines 20-22 and column 4, lines 17. In view of the teachings of Hull et al. it would have been obvious to one in the art to modify Hunter by placing a vertical mark on the transparent flap since this would allow additional information to be displayed by the holder, i.e. the vertical mark could be formed by one of the letters added to the flap, such as 1 or a number such as 1 or a symbol, etc.

Claims 8,17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 5,308,034) in view of Brown (U.S. Patent No. 5,301,393) as applied to claims 1,11, and 18 and further in view of Cross et al. (U.S. Design Patent No. 303,401).

Hunter in view of Brown disclose the applicant's basic inventive concept except for attaching a lottery card to the reader. Cross et al. discloses the idea of attaching a lottery ticket to a clip board. In view of the teachings of Cross et al. it would have been obvious to one in the art to

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modify Hunter by attaching a lottery ticket/card to the reader since this would allow the reader to be used for organizing and supporting one or more lottery tickets.

### *Response to Arguments*

Applicant's arguments filed July 20, 2005 have been fully considered but they are not persuasive.

The applicant argues that Brown's clip is molded plastic and it is not obvious how to attach a molded plastic clip to Hunter's two panel-like members. The examiner disagrees since the clip of Hunter would be made in the same general form except it would be molded from plastic as taught by Brown and the first and second pieces would be attached together as taught by Brown.

The applicant argues that Hunter fails to show a flap since a flap is a sheet that can flap, that is, that can flex and bend. The examiner disagrees since a flap is defined as a "flat, usually thin piece attached at only one side" or "a projecting or hanging piece", see Webster's II New Riverside University Dictionary. As broadly defined, the panel (10) of Hunter can be considered to be a "flap" since it is a flat, thin piece attached at only one side/projecting or hanging piece.

The applicant argues that Hunter includes two flaps and the claims define a single flap. Stating in the claims that the device includes a single flap does not exclude the use of more than one flap. The Hunter patent merely has to include at least one flap.

The applicant argues that it would not have been obvious to modify Hunter in view of Hull since any permanent indicia would limit the use of the device to a particular application.

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The examiner disagrees since the addition of a vertical mark would provide the advantage of allowing additional information to be displayed by the holder, i.e. instructions, the manufacturer, etc.

***Allowable Subject Matter***

Claims 9 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRIAN K. GREEN  
PRIMARY EXAMINER

Bkg  
Sept. 26, 2005